

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5469 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HANSABEN W/O MAHENDRA JAGLUJI MARATHA

Versus

STATE OF GUJARAT & Ors.

Appearance:

MS SUBHADRA G PATEL for Petitioner

Mr. Nigam R.Shukla, A.G.P. for Respondents

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 22/10/96

ORAL JUDGEMENT

This Special Civil Application is directed against detention order dated 24th April, 1996 passed by the Commissioner of Police, Ahmedabad city detaining the petitioner under the provisions of Gujarat Prevention of Anti-social Activities Act, 1985. The detention order was executed on 24th April, 1996 and since

then the petitioner is in detention lodged at Sabarmati Central Jail, Ahmedabad.

2. The Special Civil Application was filed on 24th July, 1996 and on 25th July, 1996 Rule returnable for 19th August 1996 was issued. So far no reply has been filed on behalf of the respondents nor any affidavit in reply has been filed by any of the respondents.

3. The grounds enclosed with the detention order show that against this lady detenu six criminal cases were registered under Prohibition Act involving 10 to 32 litres of country liquor. Out of these six cases, five cases were pending trial before the Court and investigation was going on at the time when the detention order was passed. Besides, in the allegations in these criminal cases, the detaining authority has noted that the instances dated 30th March, 1996 and 25th April, 1996 with regard to which witnesses have stated that the petitioner has been pressurising the witnesses to store liquor stock in their houses and in case of refusal, the witnesses were beaten and other witness was also beaten taking him to be a police informant. The witnesses have deposed against the petitioner's anti-social activities and have also requested that they were frightened of the petitioner and therefore, their identity be kept secret. Accordingly, the detaining authority has invoked the provisions of section 9(2) of PASA Act. The detaining authority has also considered that it was necessary to pass a detention order against the petitioner in order to restrain her from continuing her anti-social activities and proceedings of externment were initiated for the purpose. Although the detention order has been challenged on several grounds, at the time of arguments, learned counsel for the petitioner kept her arguments confined to the question that it was not a case of breach of public order and even if the allegations and the material as has been used against the petitioner by the detaining authority is taken into consideration, it may amount to a case of breach of law and order and therefore, the detention order cannot be sustained.

4. For the detailed reasons stated in the decision dated 4th October, 1996 rendered by this Court, in Special Civil Application No. 3879 of 1996, it is clear that the material as has been used in the present case even if taken to be true, may at the most make out a case of breach of law and order and there is no question of breach of public order. In view of the reasons contained in the aforesaid decision, the present impugned detention order cannot be sustained in the eye of law.

5. Accordingly, the Special Civil Application is allowed. The impugned order dated 24th April, 1996 passed by the Police Commissioner, Ahmedabad is quashed and set aside. The petitioner's detention is declared to be illegal. The respondents are directed to release the petitioner and set her at liberty forthwith if not required in any other case. Rule is accordingly made absolute.